



to

Senate Employment, Workplace Relations and Education
Legislation Committee

Inquiry into the provisions of the OHS and SRC Legislation Amendment Bill 2005

Organisation: Australian Council of Trade Unions

Contact: Steve Mullins
OHS Officer

Address: Level 2, 393 Swanston St
Melbourne 3000

Phone: 03 9664 7302

Fax: 03 9663 4283

Email: smullins@actu.asn.au

Authorised by: Richard Marles
Assistant Secretary ACTU

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Introduction

The Australian Council of Trade Unions (ACTU) is the peak body of the Australian union movement representing the interests of over 1.8 million working people and their families.

General comments

Prior to the *OHS and SRC Legislation Amendment Bill 2005*, the federal government introduced an amendment Bill that stripped back conditions in the *OHS (Commonwealth Employment) Act 1991* and began granting licences to eligible corporations to self-insure under Comcare. Now, the *OHS and SRC Legislation Amendment Bill 2005* extends the coverage of the stripped back OHS Act to those eligible corporations self-insuring under Comcare.

Recently, fifteen thousand workers have been removed from the state and territory systems by businesses applying to self-insure under Comcare. This figure will continue to rise as more and more multi-state employers successfully apply to self-insure under Comcare.

The consequences of the changes to Australia's OHS and workers' compensation systems will compound over time.

- The financial pool in the state systems will reduce, increasing premiums for remaining businesses in the state schemes and increasing pressure on workers' entitlements.
- More workers will be exposed to Comcare's low cap on pain and suffering damages; low lump sums available for permanent impairment; reduced percentage assessments for the most common injuries; and poor dispute resolution procedure.
- The stripped back Commonwealth OHS Act will isolate workers by restricting their access to information and representation.
- The existing compliance obligations under the Commonwealth OHS Act are very poor compared to other state and territory Acts, allowing businesses to drop standards without fear of consequences.
- The capacity of Comcare to inspect workplaces and enforce laws will reduce further as more businesses gain coverage.
- It is entirely plausible that the current Australian OHS and workers' compensation systems, made up of a dynamic mix of state, territory and commonwealth schemes will, over time, be reduced to monolithic system with all the problems outlined in this document.

The International Labor Organisation (ILO) estimates that in Australia there are over 6700 work-related deaths per year from injury and disease. According to the Australian Bureau of Statistics, almost half a million (477,800) people experience a work-related injury or illness each year.

The primary reason for amending laws relating to occupational health and safety should be to improve occupational health and safety standards and reduce injuries,

illness and fatalities. This Bill gives no regard to this goal. Instead, this Bill's sole purpose is to reduce compliance obligations on big business.

The ACTU contends that reducing compliance obligations on business will, in fact, run counter to the objectives of the Australian Safety and Compensation Council's National OHS Strategy to reduce occupational injury by 40% and fatalities by 20% by 2012. There is certainly no legitimate evidence to suggest that incidents of death, injury and disease have been reduced because a company's compliance obligations have been reduced.

The OHS(CE) Act and the consequences of extending its coverage.

The federal government has introduced the OHS (Commonwealth Employment) Amendment Bill 2005, amending the 1991 OHS(CE) Act. It reflects the federal government's mood to sideline trade unions and heeds the call by big business to self-regulate OHS.

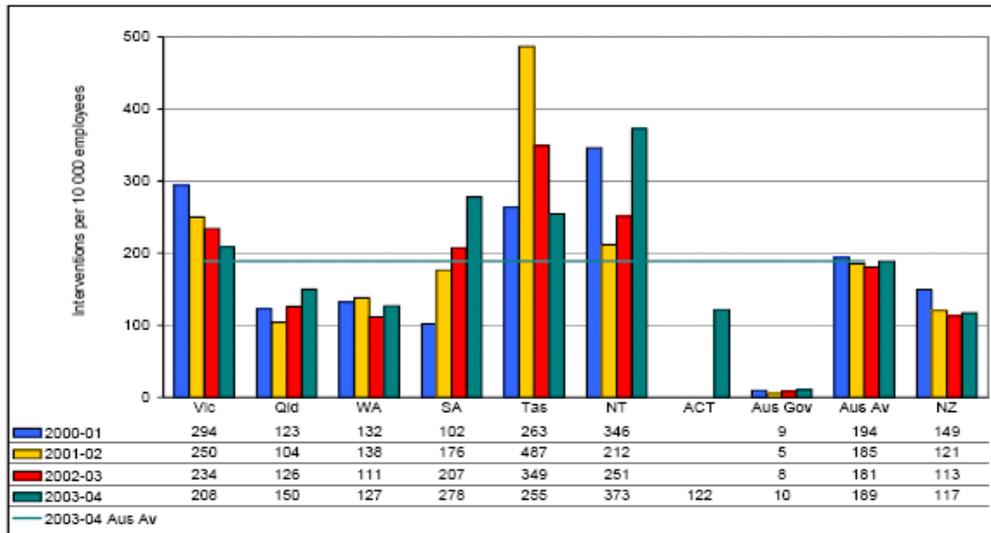
Extending coverage of the Commonwealth OHS Act to multi-state employers self-insuring under Comcare will open up a "**safety gap**" that will threaten the welfare of workers and their families all across Australia.

- The Commonwealth does not maintain a force of safety inspectors. Instead they rely on accessing the services of state-based inspectors under a memorandum of understanding between the governments. Under this arrangement the State watchdog cannot recommend that an employer be prosecuted; that remains a matter for the Commonwealth.
- Despite claims that they retain the services of "over 200 inspectors", the Commonwealth has used Victoria's safety investigators less than a dozen times over the past 5 years.
- Penalties on employers are substandard and rarely enforced

The following figures taken from WRMC Comparative Performance Monitoring Seventh Report (Nov 2005) paint a stark picture about voluntary compliance.

2003/04	Comcare	Victoria's WorkSafe
Number of safety inspectors/investigators	16	236
Workplace interventions	245	43,719
Safety prohibition and improvement notices	17	12,492
Prosecutions	0	110
Number of employees	286,000	2, 103, 800
Number of workplaces	N/A	300,000 (approx)

Figure 19 Workplace interventions per 10 000 employees



During that time there have been a number of tragic workplace incidents where Victoria has recommended that a Commonwealth employer be prosecuted following investigations that show serious safety failures, only to have nothing done by Comcare.

There has been strong lobbying from business for self-regulation and education as an alternative to enforcement and compliance. Self-regulation and education about health and safety is not an alternative. Enforcement of criminal law should not depend on the capacity of the criminal.

The enforcement of occupational, health and safety laws and other related legislation sends a powerful and effective message to employers that the failure to abide by occupational health and safety laws has serious consequences.

In his June 2003 submission to the Productivity Commission, Professor Richard Johnstone invited the Commission to take full account of the proceedings of the Australian OHS Regulation for the 21st Century conference, July 2003. In his presentation to the conference, Professor Johnstone observed that:

- There is very little, if any, empirical evidence that the 'advise and persuade' mode does reduce workplace injury and disease. (Johnstone Presentation p.9)
- There must be higher maximum fines and a broader range of sanctions, including possible imprisonment for culpable corporate officers. (Johnstone Presentation p.46)
- Prosecutions should focus not only on punishing organisations for contraventions resulting in illness, injury or death, but also on organisations which expose workers to significant risk of injury, illness or death. (Johnstone Presentation p.49)

Royal Commission into the Building and Construction Industry, Final Report concluded that:



There is persuasive support for the view that the extent of compliance with occupational health and safety obligations is strongly influenced by a reasonable expectation of the likelihood of being inspected, prosecuted, convicted and having a meaningful penalty imposed. The presence of occupational health and safety inspectors is important. (Royal Commission, Final Report, vol.6, p.83)

Conclusion

The Commonwealth system has very limited capacity to inspect and enforce or penalise. By allowing more businesses into the system, Comcare's capacity to ensure businesses comply with OHS standards will be further reduced. There is no indication that the federal government will address this serious concern. Instead, the government is promoting self-regulation and voluntary compliance. This spells danger for workers.

The ACTU opposes this Bill.